SUPREME COURT OF THE UNITED STATES.

No. 669.—October Term, 1926.

The United States of America, Petitioner, vs. Leib Ritterman.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[February 21, 1927.]

Mr. Justice Holmes delivered the opinion of the Court.

The respondent was indicted for smuggling and clandestinely introducing into the United States from Canada, merchandise, viz., 1022.85 carats of unset cut diamonds, without making any declaration to enter the same and without causing them to be invoiced for the purpose of ascertaining the duties upon them and without paying or accounting for the duties to which they were subject, although he had an opportunity to do so, with intent to evade payment of such duties. He was convicted in the District Court but the judgment was reversed by the Circuit Court of Appeals. 12 F. (2d) 849. A writ of certiorari was granted by this Court under the Act of February 13, 1925, c. 229, amending § 240(a) of the Judicial Code. 43 Stat. 936, 938.

On January 28, 1926, the respondent bought a ticket in Montreal for New York and sought to have a Gladstone bag that he carried checked through to New York. A customs inspector sent there by the United States for the convenience of travellers asked him about the contents and he answered 'Just my own personal wearing apparel.' Such examination as the inspector made disclosed nothing but clothing and personal effects. The inspector thereupon tied and sealed the bag and attached the requisite manifest. In the ordinary course of events the strings would have been cut after crossing the boundary line and the bag would have gone on to New York and then would have been delivered to the owner without more. Some suspicion was felt however and the respondent was again questioned after

entering the United States and repeated that he had nothing to declare. On the train's arrival at St. Albans, Vermont, which is the port of entry, he was called into the custom house and there again stated that he had nothing, and more specifically, no diamonds, to declare, and on the suggestion that he had a quantity in his possession the day before, in Montreal, said that he had but placed them in a bank there, named. An examination of his person was begun and while he was removing his clothes he was asked for the key to the Gladstone bag and handed it over. The respondent continued undressing but before finishing said to the assistant collector, "I haven't any diamonds on my person; they are in my grip." Within a few minutes officers who had been examining the bag in another room reported that diamonds had been found hidden there. They were of the amount alleged, were valued at $122,492.43, United States valuation, and were subject to a duty of twenty per cent. Act of 1922, c. 356, Title I, Schedule 14, Par. 1429, 42 Stat. at L. 917. It does not appear that the discovery was brought about by the confession. It seems to have been the result of search alone.

The Tariff Act of 1922, c. 356, § 593 (a), 42 Stat. 858, 982, is as follows:

"Smuggling and clandestine importations. (a) If any person knowingly and willfully with intent to defraud the revenue of the United States smuggles or clandestinely introduces into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, every such person, his aids, abettors and abettors, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding $5,000, or imprisoned for any term of time not exceeding two years, or both, at the discretion of the court."

The Judge gave the following instructions to the jury:

"If you find that the defendant falsely and fraudulently intending to defraud the revenue of the United States told Collector Whitehill and Assistant Collector Walsh at the customs house that he did not have any diamonds to declare, this constituted the offense of smuggling, notwithstanding that later, while his person was being searched by Assistant Collector Walsh at the customs house, he admitted that he had some diamonds in his Gladstone bag.

"If the defendant intended to smuggle the merchandise in question, he had an opportunity to change his mind up to the time when the obligation to pay or account for duties arose, and if you

believe that the defendant did so change his mind and did so declare then it is your duty to find him not guilty.

"If you find as a fact that the defendant had no opportunity to declare the Gladstone bag because it was seized or taken from him, and that his first opportunity to declare the diamonds came at the time when he was asked for the key and before his examination was completed, if you believe that he then availed himself of this opportunity then your verdict should be not guilty."

The first paragraph of the charge was excepted to and was held erroneous by the Circuit Court of Appeals. It was held that the respondent could not be convicted under § 593. *Keck* v. *United States*, 172 U. S. 434, was taken to establish that smuggling could not be committed before the moment when the obligation to pay arose, that is, after the duty was established at the custom house. *Keck* v. *United States* did not decide that a man who wishes to smuggle must wait until he can find a custom house. Its effect is simply that the customs line is not passed by goods at sea when they pass the three-mile limit and have not yet been landed. The statute then in force (R. S. § 2865) after the words 'which should have been invoiced' added 'without paying or accounting for the duty.' The omission of the later words is explained in different ways by the two sides, but for the purposes of this decision we treat it as immaterial. Here diamonds were clandestinely introduced upon the soil of the United States, and although they would pass a point at which they ought to be examined, they would not have been, but on the contrary would have been secure from further inspection had the trick succeeded. If they had been carried across the boundary in such a way as to avoid a port of entry, we suppose that the offence of smuggling would have been complete when they passed the line, although the smuggler might repent and afterwards report for payment of duties. We perceive no difference because of the accident that the goods had to pass a custom house which the respondent's fraud had deprived of further function if it had not been found out.

It does not appear to us to need argument that the diamonds were 'merchandise which should have been invoiced' and appeared to be such on the face of the indictment. The respondent could not get rid of the duty by hiding them in his stockings and other personal luggage. He could not purge himself of the consequences of his fraud by confessing when he saw that he was on the point

of being discovered or, as might have been found, after he had been. The argument that in such circumstances he was entitled to forty-eight hours, § 484(a), or any time to change his mind and make entry of the goods, seems to us extravagant. Repentance came too late.

Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.